

COTTONWOOD HEIGHTS

RESOLUTION NO. 2011-36

A RESOLUTION DECLARING POLICE K-9 "REMO" SURPLUS AND AUTHORIZING SALE TO NAPLES CITY FOR NOMINAL VALUE

WHEREAS, § 2.150.060 of the COTTONWOOD HEIGHTS CODE OF ORDINANCES (the "*Code*") establishes the procedures for disposal by the city of Cottonwood Heights (the "*City*") of its surplus property; and

WHEREAS, the City's police department (the "*CHPD*") recently determined to retire police K-9 "Remo" from active service with the CHPD and has informed the City's finance director of the surplus nature of Remo; and

WHEREAS, consequently, the finance director has informed the City's city council (the "*Council*") that "Remo" is surplus property of the City as required by Code § 2.150.060(C); and

WHEREAS, the chief of the CHPD has informed the Council that Naples City, Utah desires to purchase "Remo" for nominal value and, in connection therewith, to covenant to provide good care for "Remo" for the balance of his natural life and to indemnify the City and its related parties from any claims, actions, proceedings, etc. arising from or related to "Remo" or his actions after the date of the conveyance, as provided in Code § 2.150.060(H); and

WHEREAS, the Council met on 9 August 2011 to consider, among other things, (a) declaring "Remo" surplus; and (b) approving the City's entry into an agreement (the "*Agreement*") whereby the City would sell "Remo" to Naples City for nominal value, conditioned on, *inter alia*, Naples City's covenant to provide good care to "Remo" for the balance of his natural life and to indemnify the City and its related parties from any claims, actions, proceedings, etc. related to or arising from Remo or his actions after the effective date of the Agreement; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to (a) declare "Remo" surplus; and (b) approve the City's entry into the Agreement, a copy of which is annexed hereto;

NOW THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council as follows:

1. Police K-9 "Remo" is hereby declared to be surplus and no longer needed by the City;
and
2. "Remo" is hereby declared to be of nominal value; and
3. The City's entry into the Agreement is hereby approved, and the City's mayor and recorder are hereby authorized to execute and deliver the Agreement, following such modifications

to the Agreement as the mayor, in consultation with the City's manager and attorney, may deem to be reasonable and in the City's best interest.

This Resolution, assigned no. 2011-36, shall take effect immediately upon passage.

PASSED AND APPROVED effective 9 August 2011.

COTTONWOOD HEIGHTS CITY COUNCIL



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

By Kelvyn H. Cullimore, Jr.
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

| | | |
|--------------------------------|---|------------------------------|
| Kelvyn H. Cullimore, Jr. | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Gordon M. Thomas | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| J. Scott Bracken <i>Absent</i> | Yea <input type="checkbox"/> | Nay <input type="checkbox"/> |
| Nicole Omer | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Tee W. Tyler | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |

DEPOSITED in the office of the City Recorder this 9th day of August 2011.

RECORDED this 10 day of August 2011.

565176.1

Purchase and Sale Agreement (CHPD K-9)

THIS PURCHASE AND SALE AGREEMENT (this "*Agreement*") is made and entered into effective ___ August 2011 between **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*Seller*"), and **NAPLES CITY**, a Utah municipality whose address is 1420 East 2850 South, Naples, UT 84078 ("*Buyer*").

R E C I T A L S:

- A. Seller owns, and has a substantial investment in, a police-trained canine named Remo ("*Remo*"), who has served in Seller's police department's "K-9 Unit" (the "*K-9 Unit*").
- B. Buyer feels that Remo will be a useful addition to Buyer's police department (the "*NCPD*") and desires to purchase Remo from Seller.
- C. Seller is willing to sell Remo to Buyer on the terms and conditions hereinafter set forth.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Sale and Delivery of Remo.** Seller hereby **sells, assigns, transfers** and **conveys** ownership of Remo to Buyer as specified in this Agreement.

Section 2. **Purchase Price.** In exchange and as payment in full for Remo and against delivery thereof, contemporaneously herewith Buyer shall pay to Seller the total sum of One Dollar (U.S. \$1.00) (the "*Purchase Price*") in cash.

Section 3. **Buyer's Representations, Warranties and Additional Covenants.** To induce Seller to enter into and perform under this Agreement, Buyer hereby irrevocably represents, warrants, certifies and covenants to Seller as follows:

(a) *Care.* From and after the effective date of this Agreement, and thereafter for the duration of Remo's natural life, Buyer shall vigilantly provide, or cause to be provided, companionship and care for Remo, including, without limitation, indoor shelter, appropriate and ample food, water, affection, and reasonably adequate veterinary care.

(b) *Law Enforcement Use.* Buyer may use and employ Remo for law enforcement purposes in connection with NCPD's operations, in accordance with all applicable laws, rules, regulations, guidelines and standards. Buyer shall not sell, convey, assign or transfer ownership or possession of Remo to any other individual or entity, or allow Remo to be

employed or used for law enforcement purposes by any other individual or entity, without prior written permission from Seller's city manager following consultation with Seller's chief of police.

Buyer acknowledges that the covenants, etc., detailed in this Section 3 are irrevocable and are a material basis for Seller's agreement to sell and convey Remo to Buyer for the nominal cash consideration specified in Section 2, above.

Section 4. **Release of Seller.** For and in consideration of Seller's agreement to sell, assign, transfer and deliver ownership of Remo to Buyer, Buyer hereby knowingly and voluntarily waives, releases and forever discharges Seller and its elected and appointed officers, agents, employees, representatives, assigns, contractors, insurers, attorneys and other related parties and successors-in-interest (collectively, "*Related Parties*") of and from any and all liabilities, claims, demands, damages, actions and causes of action, or suits at law or in equity, of whatsoever kind or nature, which Buyer may have had or assert to have had, or now has or asserts to have, or hereafter may have or assert to have, arising from, based upon, or in any way relating to Remo or his actions arising after the effective date of this Agreement.

Section 5. **Indemnification.** Buyer shall indemnify, defend and hold Seller and its Related Parties harmless from and against any and all demands, damages, claims, suits, obligations, costs, expenses, debts and liabilities, known or unknown, suspected or unsuspected (including, but not limited to, costs of suit and reasonable attorneys' fees), arising from, based upon or related to Remo or his actions occurring after the effective date of this Agreement.

Section 6. **Default; Remedies.** If any party fails to perform any of its obligations hereunder and such conditions are not cured within ten days after written notice thereof by the non-defaulting party, the defaulting party shall be in default, thereby entitling the non-defaulting party to proceed at law and in equity to enforce its rights under this Agreement. The remedies of the non-defaulting party hereunder shall include, without limitation, the remedy of specific performance and the right to obtain injunctive relief.

Section 7. **General Provisions.** The following provisions also are integral to this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(i) Attorneys' Fees. In the event any action or proceeding is brought by either party concerning this Agreement or the transactions contemplated hereby, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal, or in any bankruptcy or insolvency proceeding.

(j) Notice. All notices provided for herein shall be in writing and shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses set forth above or at such other address(es) as may be designated by a party from time to time in writing.

(k) Time of Essence. Time is the essence of this Agreement.

(l) Costs. All costs and expenses, including attorneys' fees, incurred by each party in conjunction with this Agreement shall be paid by the party which has incurred such costs and expenses.

(m) Assignment. No party may assign its rights or delegate its duties under this Agreement without the other's prior written consent.

[Signature page follows.]

DATED effective the date first above written.

BUYER:

ATTEST:

NAPLES CITY, a Utah municipality

By: _____
_____, Recorder

By: _____
Dean A. Baker, Mayor

SELLER:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By: _____
Linda W. Dunlavy, Recorder

By: _____
Kelvyn H. Cullimore, Jr., Mayor

565168.1